

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

SILVER SPRING, MD

ORDER NO. 14,936

IN THE MATTER OF:

Served July 24, 2014

Rulemaking to Amend Rules of)	Case No. MP-2014-115
Practice and Procedure and)	
Regulations: Regulation Nos. 54,)	
58, 60, and 67)	

Pursuant to Title II of the Washington Metropolitan Area Transit Regulation Compact,¹ (Compact), Articles III, V, and XIII, and Commission Rule No. 30, the Commission hereby initiates and gives notice of a proposed rulemaking for the purpose of making amendments to the Commission's Rules of Practice and Procedure and Regulations, Regulation Nos. 54, 58, 60, and 67.

The Washington Metropolitan Area Transit Commission, (Commission or WMATC), licenses and regulates private sector motor carriers transporting passengers for hire between points in the Washington Metropolitan Area Transit District.²

Article III, Section 6, of the Compact provides that: "The Commission . . . shall publish rules and regulations governing the conduct of its operations." Article XIII, Section 3(a), states that: "The Commission shall perform any act, and prescribe, issue, make, amend, or rescind any order, rule, or regulation that it finds necessary to carry out the provisions of [the Compact]." Article XIII, Section 2(b), states that: "Rules of practice and procedure adopted by the Commission shall govern all hearings, investigations, and proceedings under [the Compact]." Article V, Section 4, stipulates that: "The Commission may delegate by regulation the tasks that it considers appropriate."

Commission Rule No. 1-04 states that: "The Commission may designate and authorize one or more of its members, employees, or representatives to conduct any inquiry, investigation, hearing, or

¹ Pub. L. No. 101-505, § 1, 104 Stat. 1300 (1990), amended by Pub. L. No. 111-160, 124 Stat. 1124 (2010) (amending tit. I, art. III).

² The Metropolitan District includes: "the District of Columbia; the cities of Alexandria and Falls Church of the Commonwealth of Virginia; Arlington County and Fairfax County of the Commonwealth of Virginia, the political subdivisions located within those counties, and that portion of Loudoun County, Virginia, occupied by the Washington Dulles International Airport; Montgomery County and Prince George's County of the State of Maryland, and the political subdivisions located within those counties."

other process or act necessary to its duties and function." Rule No. 31, titled "Staff of the Commission", provides that:

The Executive Director is in charge of the offices of the Commission. The staff is under the direct supervision of the Executive Director. In the performance of administrative functions, the Executive Director works under the direction of, and is responsible to, the Chairman of the Commission.³ Otherwise, the Executive Director is under the direction of, and is responsible to, the full Commission.

In October 2011, the Commission's Rules of Practice and Procedure and Regulations included some specific delegations of authority to the Executive Director.⁴ But not all Commission delegations in existence at that time had been published in that manner. Those that had not were added to the Commission's Rules of Practice and Procedure and Regulations in December 2011 after notice and opportunity to comment.

Relegating to staff level the responsibility for handling routine matters requiring little or no exercise of discretion has improved the efficiency of the agency without compromising the public interest or prejudicing the rights of carriers subject to WMATC regulation. Guided by that experience, the Commission has identified additional routine tasks requiring little or no exercise of discretion that may be safely relegated to staff level.

The Commission also has identified opportunities for making greater use of existing technology to make the handling of routine matters more efficient.

The Commission invites comments on the following proposed amendments to its Rules of Practice and Procedure and Regulations.

For each proposed amendment, the existing language is provided, with deletions shown in double strike font and additions shown in bold.

I. ELECTRONIC APPLICATION FILING

The Commission proposes authorizing electronic filing of operating authority applications. No such procedure exists at this time, but electronic filing is feasible using existing technology and would make the application process more efficient for the Commission

³ Under Article III, Section 3(b), of the Compact: "The chairman shall be responsible for the Commission's work and shall have all powers to discharge that duty."

⁴ See Rule Nos. 5-01, 7-02, 7-05, 7-06, 8-01-04, 15-04, 18-01, 19-02, 24-02, 25-02, and 27-02; Regulation Nos. 54-03, 55-05, 62-03. Available at www.wmatc.gov.

and offer an additional filing option for applicants. This proposal would be enacted by amending existing Regulation No. 54-03 as follows:

54-03. How Filed

An application shall be filed by delivering the original ~~and four complete copies~~ to the Commission's offices. Filing fees and, as required, the cost of publishing notice, of transcribing a hearing on an application, and for an administrative law judge to preside over a hearing, shall be borne by the applicant. Incomplete applications, ~~those lacking the required number of copies,~~ and those otherwise failing to comply with these regulations, may be rejected by the Executive Director and returned to the applicant. **For the purpose of this Regulation No. 54-03, an original application shall include an application filed electronically through the Commission's website using the Commission's electronic filing procedure, and an application filed in this manner shall be deemed to meet the original signature requirement of Commission Rule No. 4-05.**

II. ELECTRONIC SERVICE OF CONDITIONAL GRANT ORDERS

Commission Rule No. 24-02 stipulates that Commission "[d]ecisions and orders shall be served by the Executive Director, who shall serve copies thereof upon all parties or their attorneys of record." Commission Rule No. 5-01 provides that orders shall be served by the Executive Director by mail, personal service, or leaving a copy at the party's principal place of business. No provision is made for electronic service of orders even though: (1) the Commission has email addresses and fax numbers on file for most applicants and has been posting copies of all orders on its website for several years; and (2) all but a few application orders are issued in non-adversarial settings.

The Commission therefore proposes authorizing electronic service of orders issued in application proceedings as an option to the forms of service already permitted. This will enable applicants to receive more timely service of application orders while allowing the Commission to avoid the time and expense associated with mailing hundreds of routine, un-contested orders each year.

This proposal would be enacted by adopting new Regulation No. 54-09 as follows:

54-09. Service of Orders

Orders issued in application proceedings may be served in a manner complying with Commission Rule No. 5-01 or by electronic means using the contact information on file with the Commission for the person to be served or for the person's agent, attorney, or other representative designated to receive such service.

III. MANDATORY WMATC INSURANCE FILER ID

The Commission proposes requiring all filers of WMATC Insurance Endorsements to obtain a WMATC Electronic Filing ID. Until now, electronic filing has been the method employed by the vast majority of filers, even though electronic filing is optional, not mandatory.

Filers consist of insurance companies and their third party contractors. These entities are large, sophisticated business operations and should have no trouble complying with a mandatory rule that requires filers to file electronically, which has proven over the past several years to be more efficient for filers and the Commission than filing by mail or fax.

This proposal would be enacted by amending existing Regulation No. 58-18 as follows:

58-18. Electronic Filing ID. An insurer ~~may~~ **shall** obtain an Electronic Filing ID, for the purpose of filing WMATC Insurance Endorsements and notices of cancellation, by completing and submitting the Commission's Electronic Filing ID application form. Each insurer assigned an ID shall be responsible for keeping its ID and password secure. If an insurer chooses to have its filings made by a third party, it may share the ID and password with that entity.

IV. INSURANCE GAP SHOW CAUSE ORDERS

The Commission proposes authorizing the Executive Director to issue a show cause order when a carrier has an insurance gap -- a period of time during which the carrier's operations were not covered, or were not fully covered, by a WMATC Insurance Endorsement -- and the carrier fails to verify timely cessation of operations and/or fails to corroborate with pertinent business records as required by Regulation No. 58-14. Current standard procedure is to issue a show cause order by direction of Commissioners in such a situation.

The fact of a respondent's failure to furnish a written verification or copies of business records is readily apparent. In addition, a show cause order, by its own terms, does not mete out sanctions; rather, it offers the respondent an opportunity to explain why no sanctions are warranted despite a prima facie failure to comply with Commission requirements. Delegating this action to the Executive Director should reduce the time required to conduct such proceedings without prejudicing the rights of carriers under the Compact.

This proposal would be enacted by amending existing Regulation No. 58-14 as follows:

58-14. Non-Continuous Coverage.

(a) If a carrier's operating authority is suspended under Regulation No. 58-12 and the effective date of a later-filed replacement Endorsement falls after the automatic

suspension date, the carrier must verify timely cessation of operations in accordance with Commission Rule No. 28 and corroborate the verification with client statements and/or copies of pertinent business records, as directed by Commission order.

- (b) **Upon the failure of a carrier to comply timely with the foregoing requirements of this Regulation No. 58-14, the Executive Director shall issue an order directing the carrier to show cause why a civil forfeiture should not be assessed against the carrier and/or why the carrier's operating authority should not be suspended or revoked.**

V. INSURANCE-RELATED SUSPENSION

The Commission proposes clarifying the Executive Director's mandate under the last sentence of Regulation No. 58-20 to lift suspensions of operating authority when the conditions of Regulation No. 58-13 have been met. That provision could be construed to mandate lifting an automatic suspension of WMATC operating authority under Regulation No. 58-12 notwithstanding the presence of other grounds warranting continued suspension. The proposed clarification would negate such a construction.

The Commission further proposes reorganizing Regulation No. 58-20 by incorporating it into Regulation No. 58-12. Existing Regulation No. 58-12 would be redesignated Regulation No. 58-12(a) without changing the substance. All but the last sentence of Regulation No. 58-20 would be redesignated Regulation No. 58-12(b) without changing the substance. The last sentence of Regulation No. 58-20 would be redesignated Regulation No. 58-12(c), with the aforementioned clarifying amendment.

Amended Regulation No. 58-12 would read as follows:

58-12. Automatic Suspension.

- (a) Failure to replace a WMATC Insurance Endorsement prior to termination shall result in immediate, automatic suspension of a carrier's WMATC operating authority. The carrier must suspend operations immediately and may not recommence operations unless and until otherwise ordered by the Commission.
- (b) The Commission's Executive Director shall issue an order noting the automatic suspension of a carrier's operating authority under Regulation No. 58-12 as soon as practicable after such an event occurs. The order shall admonish that no operations may be conducted under the carrier's certificate of authority unless and until otherwise ordered by the Commission. The order shall advise that the carrier's operating authority shall be subject to revocation if the carrier fails to

file the necessary WMATC Insurance Endorsement(s) and pay the late fee under Regulation No. 67-03(c) within 30 days.

- (c) **Unless a carrier's WMATC operating authority stands suspended for reasons in addition to those triggering automatic suspension under Regulation No. 58-12(a),** the Executive Director shall issue a lift-suspension order if the conditions for lifting a suspension under Regulation No. 58-13 are met within the aforementioned 30 days.

VI. INSURANCE-RELATED REVOCATION AND RECONSIDERATION

The Commission proposes authorizing the Executive Director to issue a revocation order when a carrier fails to comply timely with a suspension order issued by the Executive Director under Regulation No. 58-12 for a carrier's failure to maintain on file with the Commission a valid WMATC Insurance Endorsement. Such suspension orders universally contain two requirements that must be met within 30 days: (1) replace the terminated WMATC Insurance Endorsement; and (2) pay a \$100 late fee. The fact of a carrier's success in complying with both requirements within 30 days is readily apparent from the insurance filings and late fee payments received by the Commission. It forms the basis for the Executive Director lifting a suspension pursuant to Regulation No. 58-20, which the Executive Director has been doing for many years.⁵

Currently, by operation of Commission practice and precedent, when the Executive Director determines that a carrier suspended under Regulation No. 58-12 has failed to replace the terminated WMATC Endorsement and pay the \$100 late fee, the case is referred to the Commissioners for confirmation and revocation of the carrier's operating authority. Given the readily ascertainable nature of a carrier's success or failure at meeting the two requirements at issue, it would seem that the additional layer of review adds little or nothing of value to the public at the expense of administrative efficiency.

The foregoing proposed delegation would be balanced by an amendment authorizing the Executive Director to reinstate the certificates of carriers revoked for not complying with a suspension order issued by the Executive Director under Regulation No. 58-12, but only if the carrier applies for administrative reconsideration under Rule No. 27, and in accordance with Article XII, Section 4, of the Compact, within 30 days of revocation and only if the application is supported by proof of full compliance with the suspension order requirements. Currently, the Executive Director refers such cases for confirmation and reinstatement by the Commissioners. Just as the

⁵ See *In re Nile Express Transport, Inc.*, No. MP-07-050, Order No. 10,376 (Apr. 3, 2007) (Executive Director may issue a lift suspension order once respondent has complied with the suspension order).

current revocation process introduces needless delay, the current reinstatement process needlessly delays the availability of service from carriers fit to serve the public again by virtue of having complied with the suspension order's requirements within the time prescribed for administrative reconsideration under the Compact.

These proposals would be implemented by reorganizing existing Regulation No. 58-15 into two subsections, the first to be created by adding new language delegating revocation authority to the Executive Director and the second to be formed out of the existing text, as amended to delegate reinstatement authority to the Executive Director. As reconstituted, Regulation No. 58-15 would read as follows.

58-15. Revocation & Reconsideration.

(a) Upon a carrier's failure to comply timely with a suspension order issued under Regulation No. 58-12, and as soon as practicable thereafter, the Executive Director shall issue an order revoking the carrier's operating authority or shall refer the matter for consideration by the Commissioners.

(b) If a carrier's authority is revoked for failure to comply with Regulation No. 58, or an order issued thereunder, ~~an application for reconsideration under Article XIII, Section 4(a), of the Compact must be supported by the necessary Endorsement(s) and payment of late fee under Regulation No. 67-03(c)~~ the Executive Director shall reopen the proceeding and reinstate said authority if the following two conditions are met: (i) the carrier files a timely application for reconsideration in accordance with Rule No. 27-06; and (ii) the application is supported by the necessary Endorsement(s) and by payment of the late fee under Regulation No. 67-03(c); provided, that reinstatement shall not be available under this provision if the carrier's WMATC operating authority stands revoked for other reasons, as well.

VII. ANNUAL REPORT/FEE DEADLINES

The Commission proposes amending Regulation Nos. 60-03 and 67-04, which govern the suspension of operating authority for a carrier's failure to tender an annual report, annual fee, or associated late fees within 90 days of the due date. Because the late fees for not timely filing an annual report and for not timely paying an annual fee are not due until the day after the underlying annual report and annual fee are due, the 90-day deadline for late fees occurs a day later than the 90-day deadline for annual reports and annual fees. For the purpose of administrative efficiency, the Commission proposes synchronizing these deadlines to all occur on the same day by adopting the following amendments to Regulation Nos. 60-03 and 67-04.

60-03. Automatic Suspension. A carrier's operating authority shall stand suspended upon the carrier's failure to file an annual report ~~within ninety days of the due date~~ **under Regulation No. 60-01 on or before April 30 of the year the report is due.**

67-04. Automatic Suspension. A carrier's operating authority shall stand suspended upon a carrier's failure to pay an annual fee **under Regulation No. 67-02** or late fee **under Regulation No. 67-03(a) or (b)** ~~within ninety days of the due date~~ **on or before April 30 of the year the fee is due.**

VIII. ANNUAL REPORT/FEE-RELATED SUSPENSION ORDERS

The Commission proposes clarifying when the Executive Director shall lift automatic suspensions of WMATC operating authority in accordance with Regulation Nos. 60-04 and 67-06. Those regulations could be construed to mandate lifting automatic suspensions of WMATC operating authority imposed under Regulation Nos. 60-03 and 67-04, respectively, once the conditions for lifting such suspensions have been met, notwithstanding the presence of additional grounds warranting continued suspension. The proposed clarification would negate such a construction.

The Commission further proposes reorganizing Regulation Nos. 60-04 and 67-06 into two subsections each for ease of comprehension and making a technical correction to Regulation No. 60-04 regarding payment of all outstanding fees as a predicate for lifting a suspension under that provision.

Amended Regulation Nos. 60-04 and 67-06 would read as follows:

60-04. Issuance of Orders Under Rule No. 60-03.

(a) The Commission's Executive Director shall issue an order noting the automatic suspension of a carrier's operating authority under Regulation No. 60-03 as soon as practicable after such an event occurs. The order shall admonish that no operations may be conducted under the carrier's certificate of authority unless and until otherwise ordered by the Commission. The order shall advise the carrier that the carrier's operating authority shall be subject to revocation if the carrier fails to file a complete current annual report and pay all outstanding fees within 30 days.

(b) Unless a carrier's WMATC operating authority stands suspended for reasons in addition to those triggering automatic suspension under Regulation No. 60-03, ~~the~~ the Executive Director shall issue an order lifting a suspension imposed under Regulation No. 60-03 if the carrier files a complete current annual report **and pays all outstanding fees** within the aforementioned 30 days.

67-06. Issuance of Orders Under Rule No. 67-04.

- (a) The Commission's Executive Director shall issue an order noting the automatic suspension of a carrier's operating authority under Regulation No. 67-04 as soon as practicable after such an event occurs. The order shall admonish that no operations may be conducted under the carrier's certificate of authority unless and until otherwise ordered by the Commission. The order shall advise the carrier that the carrier's operating authority shall be subject to revocation if the carrier fails to pay all outstanding fees within 30 days.
- (b) Unless a carrier's WMATC operating authority stands suspended for reasons in addition to those triggering automatic suspension under Regulation No. 67-04, the Executive Director shall issue an order lifting a suspension imposed under Regulation No. 67-04 if the carrier pays all outstanding fees within the aforementioned 30 days.

IX. ANNUAL REPORT/FEE-RELATED REVOCATION AND RECONSIDERATION

The Commission proposes adopting new Regulation Nos. 60-05 and 67-09 to authorize the Executive Director to issue routine annual report/fee-related revocation orders and routine annual report/fee-related reconsideration orders.

The reasons for delegating this authority to the Executive Director mirror the reasons discussed above for delegating similar authority under Regulation 58.

Said regulations would read as follows:

60-05. Revocation & Reconsideration.

- (a) Upon a carrier's failure to respond to a suspension order issued under Regulation No. 60-04, and as soon as practicable thereafter, the Executive Director shall issue an order revoking the carrier's operating authority or shall refer the matter for consideration by the Commissioners.
- (b) If a carrier's authority is revoked for failure to comply with Regulation No. 60, or an order issued thereunder, the Executive Director shall reopen the proceeding and reinstate said authority if the following two conditions are met: (i) the carrier files a timely application for reconsideration in accordance with Rule No. 27-06; and (ii) the application is supported by the necessary complete annual report and by payment of all applicable fees under Regulation Nos. 67-02 and 67-03; provided, that reinstatement shall not be available under this

provision if the carrier's WMATC operating authority stands revoked for other reasons, as well.

67-09. Revocation & Reconsideration.

- (a) Upon a carrier's failure to respond to a suspension order issued under Regulation No. 67-06, and as soon as practicable thereafter, the Executive Director shall issue an order revoking the carrier's operating authority or shall refer the matter for consideration by the Commissioners.
- (b) If a carrier's authority is revoked for failure to comply with Regulation No. 67, or an order issued thereunder, the Executive Director shall reopen the proceeding and reinstate said authority if the following two conditions are met: (i) the carrier files a timely application for reconsideration in accordance with Rule No. 27-06; and (ii) the application is supported by payment of all applicable fees under Regulation Nos. 67-02 and 67-03 and by compliance with the annual report requirements in Regulation No. 60-01; provided, that reinstatement shall not be available under this provision if the carrier's WMATC operating authority stands revoked for other reasons, as well.

THEREFORE, IT IS ORDERED:

1. That a rulemaking is hereby initiated for the purpose of proposing amendments to the Commission's Rules of Practice and Procedure and Regulations, Rule Nos. 24, 26, and 27, and Regulation Nos. 54, 58, 60, and 67.

2. That Commission staff shall publish notice of this proceeding on the Commission's website beginning on the date of issuance and continuing through the deadline for comments.

3. That written comments must be submitted within 30 days of the date of this notice by faxing them to (301) 588-5262, emailing them to delegation-rulemaking@wmatc.gov, or mailing them or hand delivering them to 8701 Georgia Avenue, Suite 808, Silver Spring, MD 20910-3700.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS BRENNER, HOLCOMB, AND BROWN:



William S. Morrow, Jr.
Executive Director